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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 SCOTT PAYNE,

9 Plaintiff,

10 v.

11 CAROLYN W COLVIN, Acting
12 Commissioner of Social Security,

13 Defendant.

14 CASE NO. C15-0945RSM

15 ORDER ADOPTING REPORT AND
16 RECOMMENDATION

17 The Court, having reviewed Plaintiff's Complaint, the Report and Recommendation
18 ("R&R") of Judge David W. Christel, United States Magistrate Judge, the Objections to the
19 R&R, Plaintiff's response to those Objections, and the remaining record, does hereby find and
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21 ORDER:

- 22 1. The Court ADOPTS the R&R. The Commissioner has objected to the R&R, arguing
23 that it is in error because the decision from which Plaintiff appeals was not a "final
24 decision of the Commissioner," and was not "made after a hearing," and therefore is
25 not subject to judicial review. Dkt. #27. The Court disagrees. As Plaintiff responds,
26 the Commissioner has misconstrued Plaintiff's appeal and Judge Cristel's decision.
27 Plaintiff acknowledges that he cannot reopen the Commissioner's prior final decision;
28 instead, he argues that res judicata does not bar an adjudication of his present

1 applications due to the existence of new and material evidence pertaining to the
2 previously-adjudicated period. The legal authority presented in the Objections does
3 not address that issue. Moreover, the Commissioner has failed to address the legal
4 basis of Judge Cristel's decision – namely, Social Security Ruling 68-12a – or the
5 legal authority upon which he relies. Accordingly, the Undersigned agrees that the
6 ALJ erred in her decision as described in the R&R.

7 2. This matter is REVERSED and REMANDED for further administrative proceedings.

8 DATED this 19th day of April, 2016.

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12 RICARDO S. MARTINEZ
13 CHIEF UNITED STATES DISTRICT JUDGE
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